



6712-01

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 15, 73, 74 and 76

[GN Docket No. 16-142; FCC 17-158]

Authorizing Permissive Use of the “Next Generation” Broadcast Television Standard

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, we seek further comment on issues related to exceptions to and waivers of the local simulcasting requirement, whether we should let full power broadcasters use channels in the television broadcast band that are vacant to facilitate the transition to 3.0, and finally, we tentatively conclude that local simulcasting should not change the significantly viewed status of a Next Gen TV station.

DATES: Comments are due on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**; reply comments are due on or before **[INSERT DATE 90 DAYS AFTER DATE OF PUBLICATIONS IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments, identified by GN Docket No. 16–142, by any of the following methods:

- Federal Communications Commission’s Web site: [http:// www.fcc.gov/cgb/ecfs/](http://www.fcc.gov/cgb/ecfs/). Follow the instructions for submitting comments.
- Mail: Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Commission continues to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission’s
- Secretary, Office of the Secretary, Federal Communications Commission.
- People With Disabilities: Contact the FCC to request reasonable accommodations (accessible

format documents, sign language interpreters, CART, etc.) by email: FCC504@fcc.gov or phone: (202) 418-0530 or TTY: (202) 418-0432. For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: For additional information, contact Evan Baranoff, Evan.Baranoff@fcc.gov, of the Media Bureau, Policy Division, (202) 418-7142, or Matthew Hussey, Matthew.Hussey@fcc.gov, of the Office of Engineering and Technology, (202) 418-3619. Direct press inquiries to Janice Wise at (202) 418-8165. For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, send an email to PRA@fcc.gov or contact Cathy Williams at (202) 418-2918.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Further Notice of Proposed Rulemaking (FNPRM), FCC 17-158, adopted on November 16, 2017 and released on November 20, 2017. The full text of this document is available electronically via the FCC's Electronic Document Management System (EDOCS) Web Site at http://fjallfoss.fcc.gov/edocs_public/ or via the FCC's Electronic Comment Filing System (ECFS) Web Site at <http://fjallfoss.fcc.gov/ecfs2/>.

(Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.) This document is also available for public inspection and copying during regular business hours in the FCC Reference Information Center, which is located in Room CY-A257 at FCC Headquarters, 445 12th Street, SW, Washington, DC 20554. The Reference Information Center is open to the public Monday through Thursday from 8:00 a.m. to 4:30 p.m. and Friday from 8:00 a.m. to 11:30 a.m. The complete text may be purchased from the Commission's copy contractor, 445 12th Street, SW., Room CY-B402, Washington, DC 20554. Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format), by sending an e-mail to fcc504@fcc.gov or calling the Commission's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

Synopsis:

I. FURTHER NOTICE OF PROPOSED RULEMAKING

A. Introduction

1. In this Further Notice of Proposed Rulemaking, we seek further comment on three topics related to the rules adopted in the companion Report and Order. First, we seek further comment on issues related to exceptions to and waivers of the local simulcasting requirement. Second, we seek comment on whether we should let full power broadcasters use channels in the television broadcast band that are vacant to facilitate the transition to 3.0. Finally, we tentatively conclude that local simulcasting should not change the significantly viewed status of a Next Gen TV station.

B. Discussion

1. Local Simulcasting Waivers and Exceptions

2. *Simulcast Waivers.* In the Report and Order, we explain that we will consider requests for waiver of our local simulcasting requirement on a case-by-case basis, including (1) requests seeking to transition directly from 1.0 to 3.0 service on the station's existing facility without simulcasting in 1.0 and (2) requests to air a 1.0 simulcast channel from a host location that does not cover all or a portion of the station's community of license or from which the station can provide only a lower signal threshold over the community than that required by the rules.¹ With respect to such requests, we state: "We are inclined to consider favorably requests for waiver of our local simulcasting requirement where the Next Gen TV station can demonstrate that it has no viable local simulcasting partner in its market and where the station agrees to make reasonable efforts to preserve 1.0 service to existing viewers in its community of license and/or otherwise minimize the impact on such viewers (for example, by providing free or low cost ATSC 3.0 converters to viewers)."

¹ The Commission may waive its rules if good cause is shown. See 47 CFR 1.3. We explain in the Report and Order that we are not inclined to consider favorably requests to change community of license solely to enable simulcasting.

3. We seek comment on what further guidance we should provide about the circumstances in which we will grant a waiver of the local simulcasting requirement. How should we determine if a station has a “viable” simulcast partner? Given that we specify in the Report and Order that a Next Gen TV broadcaster’s 1.0 simulcast channel must continue to cover its entire community of license, should we consider a station to have no viable partner only if there is no potential simulcasting partner in the same DMA that can cover the station’s entire community of license? Alternatively, should we consider adopting a broader definition of viability? For example, should we specify that waiver applicants located in DMAs in which there are fewer than a threshold number of full power and/or Class A or LPTV broadcasters will be considered to have no viable partner? If so, what threshold should we adopt? How should we consider cases in which there are no stations that can cover a station’s community of license, and therefore serve as an ATSC 1.0 simulcast host under our rules, but there are stations in the DMA that are transitioning to ATSC 3.0 and therefore could potentially serve as a 3.0 lighthouse? If there is a potential partner in the same DMA, are there other circumstances that would make such potential partner not viable, such as, for example, if the potential partner refused to agree to being a simulcasting partner? Should we have different levels of scrutiny for waiver requests depending on whether the petition seeks to transition directly as opposed to simulcast from a facility that will not cover its community of license? For stations that seek to simulcast from a facility that will not cover its community of license, should a factor be how far the host location is from the petitioner’s community of license? Are there special circumstances we should consider for NCE stations, including those that are in isolated areas or are not centrally located in DMAs?² We seek comment on the same issues for Class A stations if they cannot find a host that allows them to satisfy the simulcasting requirements in the Report and Order. We also seek comment on the potential impact that any definition of viability would have on local viewers.

² Several commenters express concern that some broadcasters would not be able to satisfy a local simulcasting requirement because of the lack of availability of potential simulcasting partners. For example, PBS states that “[p]ublic stations may be unable to share facilities with another station, particularly in rural and isolated communities, because they are often not centrally located in a television market....” PBS further explains that this is because “noncommercial educational must-carry rights are not tied to Designated Market Areas, so such stations are not necessarily sited near their commercial counterparts, and given that 16 states are covered by statewide public television networks that are designed to serve their entire state regardless of DMA boundaries.”

4. In addition, we seek comment on what type of “reasonable efforts” we should require a waiver applicant to undertake in order to preserve 1.0 service to existing viewers in its community of license and/or otherwise minimize the impact on viewers in its coverage area. Should it be favorable to our determination if waiver applicants volunteer to provide free or low cost ATSC 3.0 converters to viewers in their coverage area? Should we require such a commitment as a condition for waiver? Are there other efforts to minimize disruption to consumers that we should consider or require? We also invite comment on other circumstances in which we should consider granting waivers of the local simulcasting requirement.

5. *Simulcast Exceptions.* We also seek comment on whether to exempt NCE and/or Class A stations as a class from our local simulcasting requirement or adopt a presumptive waiver standard for such stations. In the Report and Order, we exempt LPTV and TV translator stations from our local simulcasting requirement and allow these stations to transition directly to 3.0 service. Class A and NCE stations could also face more difficulty than commercial full power stations face when seeking a local simulcasting partner. Could allowing Class A and NCE stations to transition directly to 3.0 make them more attractive “lighthouse” candidates? We seek comment on whether, as a general matter, allowing NCE and Class A stations to transition directly would serve the public interest. Under what circumstances would direct transitions be appropriate? What effect would this have on consumers and on MVPDs? What criteria distinguish these stations from full power commercial broadcasters to justify disparate treatment?

2. Temporary Use of Vacant Channels

6. In the *Next Gen TV NPRM*, we asked whether we should “consider allowing broadcasters [that wish to deploy ATSC 3.0 service] to use vacant in-band channels remaining in the market after the incentive auction repack to serve as temporary host facilities for ATSC 1.0 or 3.0 programming by multiple broadcasters.” ONE Media requests that in markets with vacant channels, the Commission should allow full power broadcasters to use the vacant channels as “dedicated transition channels to

ensure maximum continuity of service, just as it did during the transition from analog to digital.” It suggests that these vacant channels should be made available during the post-auction transition period, and that only after the full power broadcaster has vacated the channel should the channel be made available to others, such as displaced LPTV and translator license applicants. ONE Media asserts that as primary users in the television band, full power licensees have priority to obtain licenses for vacant channels over any LPTV and translator licensees, and therefore full power licensees should be able to use such a channel as a transition channel during the voluntary ATSC 3.0 deployment period, even if it is the only channel to which a displaced LPTV or translator station could relocate. The LPTV Spectrum Rights Coalition opposes ONE Media’s proposal on the ground that it would diminish LPTV licensing rights in the middle of the displacement process. The Wi-Fi Alliance, Microsoft, the Consumers Union et al., and Dynamic Spectrum Alliance also oppose any approach that would expand broadcasters’ spectrum rights in conjunction with ATSC 3.0 deployment, and they express concern about damaging the potential success of white space use in the television bands.

7. Given the diversity of comments on this issue, we seek additional comment on the extent to which we should allow full power broadcasters to use vacant channels in the television broadcast band to facilitate the transition to 3.0, and, if so, when they should be able to use these channels, and what procedures we should use to authorize that use. As a threshold matter, how should we define a “vacant” channel for this purpose? We seek specific comment on ONE Media’s proposal, and how it potentially would affect the post-incentive auction transition/repacking process and the various other users in the repacked television band.³ That is, given that vacant channels might be needed by stations transitioning to new channel assignments, how does ONE Media’s proposal impact that and the post-auction process in general? For example, if we allow usage of vacant channels, should we only allow temporary access to a

³ In the *Incentive Auction R&O*, the Commission provided for a 39-month post-incentive auction transition pertaining to the various secondary broadcast and unlicensed operations in the TV bands – including LPTV and TV translator stations, broadcast auxiliary service, wireless microphones, and unlicensed white space devices – with the goal of promoting a smooth and effective transition process.

vacant channel after the repacking process is completed? Or, should we permit such access after the LPTV displacement window is closed?

8. If we were to permit full power licensees priority to use vacant channels as dedicated transition channels, we seek comment on the process for doing so. Specifically, how would broadcasters apply for an authorization to use a vacant channel? Should the request be for Special Temporary Authority (STA)? Should we instead consider a request for a temporary channel to be a minor change of the station's existing license and require a minor change application? If we treat these requests as minor changes, should we process such requests on a first-come, first-served basis? Should we open a window for such requests? How should we resolve competing requests for temporary channels? What should we require a broadcaster to show to demonstrate that it needs a temporary channel, and how long should the authorization last? What effect would this proposal have on other users in the repacked band, including wireless microphone users and white space device operations?⁴ We also seek input on how we should address MVPD carriage issues related to usage of vacant channels. How would the Commission handle loss of service when the full power broadcaster ceases its temporary operation – and moves back to its original facility? We seek specific comment on the effects on small entities: (1) would allowing broadcasters to use these vacant channels help small broadcasters transition, (2) would allowing broadcasters to use these vacant channels impose carriage burdens on small MVPDs, and (3) what can we do to ease the burdens on those entities? We seek comment on these and any other issues that we would need to address if we allow full power broadcasters to use vacant channels as temporary transition channels.

⁴ We note that the Commission has an open proceeding seeking comment on whether to preserve a vacant channel in every area for white space device and wireless microphone use.

3. Significantly Viewed Status of Next Gen TV Stations

9. We tentatively conclude that the significantly viewed status of a Next Gen TV station should not change if it moves its 1.0 simulcast channel to a temporary host facility.⁵ Under our proposal, a commercial television station that relocates its 1.0 simulcast channel could not seek to gain significantly viewed status in new communities or counties and such station could not lose significantly viewed status in communities or counties for which it qualified prior to the move of its 1.0 simulcast channel. We seek comment on this tentative conclusion. In the Report and Order, we impose a freeze on the filing of any requests to change the significantly viewed status of a Next Gen TV station that is moving its 1.0 simulcast channel to avoid confusion while we consider this issue.⁶

10. Stations that vary their signal strength or change their location as a result of moving their 1.0 signal to simulcast raise the question of how this change may affect their status as “significantly viewed” in certain communities or counties under §§ 76.5(i) and 76.54 of our rules. Significantly viewed status allows the significantly viewed station (1) to be carried by a satellite carrier in such community in the other market;⁷ (2) to be carried in such community by cable and satellite operators at the reduced copyright payment applicable to local (in-market) stations; and (3) to be exempt in such community from another station’s assertion of its network non-duplication or syndicated exclusivity rights. We tentatively agree with ATVA that we should maintain the status quo in the significantly viewed context with respect to 1.0 simulcast signals.⁸ We note that our tentative conclusion differs from how we addressed this issue

⁵ Significantly viewed stations are commercial television stations that the Commission has determined have “significant” over-the-air (*i.e.*, non-cable and non-satellite) viewing and are thus treated as local stations in certain respects with regard to a particular community in another television market. The Significantly Viewed Stations List is maintained on Commission’s website at <https://transition.fcc.gov/mb/significantviewedstations061817.pdf>.

⁶ We note that, in order to obtain a waiver of the network nonduplication and syndicated-exclusivity rules (collectively, “exclusivity rules”), petitioners seeking to reassert exclusivity rights on significantly viewed stations are required to demonstrate for two consecutive years that a station was no longer significantly viewed, based either on community-specific or system-specific over-the-air viewing data, following the methodology set forth in 47 CFR 76.54(b).

⁷ Significantly viewed status is an exception to the “no distant where local” requirement which prohibits satellite carriage of distant (out-of-market) stations.

⁸ We note that ATVA argues the Commission should “prohibit simulcasts that reduce a station’s eligibility for ‘significantly viewed’ carriage” and urges that the Commission “not adopt the approach it took to channel

in the channel sharing context. In the *Incentive Auction Report and Order*, the Commission found that because significantly viewed status is largely a function of signal availability, a station moving to a new channel should lose its status at the relinquished location. But unlike the channel sharing context, Next Gen TV broadcasters are not relinquishing their original channel, but rather will continue to operate on it and will ultimately return to it when the local simulcasting period ends. That is, the relocation of the 1.0 signal is temporary and a Next Gen TV broadcaster will continue to reach the communities or counties in which it is significantly viewed with an over-the-air signal, albeit in 3.0.⁹

11. We recognize that broadcasters would not soon be able to demonstrate “significant viewing” with their 3.0 signals, but expect they will eventually be able to do so once Next Gen TV service takes hold in the marketplace. In the meantime, we tentatively conclude that maintaining the status quo with respect to eligibility for significantly viewed carriage would avoid some complications and disruptions to cable and satellite television viewers who have come to rely on such signals, while not imposing added mandatory carriage burdens on MVPDs.¹⁰ We likewise tentatively conclude that expansion of eligibility for significantly viewed carriage due to the relocation of the 1.0 simulcast channel is not consistent with the purposes of local simulcasting, which includes maintaining existing television service to viewers within the station’s original coverage area but does not include expanding service into new areas. We seek comment on our proposal and tentative conclusions. We also seek comment on what effect our proposal and tentative conclusions would have on small broadcasters and MVPDs.

sharing.” Although we do not restrict simulcasts in the manner sought by ATVA, we tentatively agree with ATVA in this *FNPRM* to the extent that ATVA seeks to maintain the status quo with respect to significantly viewed carriage while local simulcasting is required.

⁹ We tentatively conclude that the availability of the 3.0 signal to the station’s existing viewers at its original location is relevant in the significantly viewed context. Moreover, considering 3.0 service in this regard will not impose additional mandatory carriage obligations on MVPDs (because MVPD carriage of significantly viewed stations is voluntary).

¹⁰ We note that significantly viewed status does not confer mandatory carriage rights to the station, but rather only allows carriage of the station via retransmission consent. Thus, maintaining the status quo with respect to eligibility for significantly viewed carriage presents no mandatory carriage burdens on MVPDs.

II. PROCEDURAL MATTERS

A. Initial Regulatory Flexibility Analysis

12. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Federal Communications Commission (Commission) has prepared this present Initial Regulatory Flexibility Analysis (IRFA) concerning the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the *Further Notice of Proposed Rulemaking (FNPRM)*. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided on the first page of the item. The Commission will send a copy of the *FNPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).¹¹ In addition, the *FNPRM* and IRFA (or summaries thereof) will be published in the Federal Register.¹²

1. Need for, and Objectives of, the Proposed Rules

13. In this Further Notice of Proposed Rulemaking, we seek further comment on three topics related to the rules adopted in the companion Report and Order, which authorizes television broadcasters to use the “Next Generation” broadcast television (Next Gen TV) transmission standard, also called “ATSC 3.0” or “3.0,” on a voluntary, market-driven basis. Next Gen TV broadcasters will continue to deliver current-generation digital television (DTV) service, using the ATSC 1.0 transmission standard, also called “ATSC 1.0” or “1.0,” to their viewers via “local simulcasting.”

14. *Simulcast Waivers and Exceptions.* First, we seek further comment on issues related to exceptions to and waivers of the local simulcasting requirement. In the Report and Order, we explain that we will consider requests for waiver of our local simulcasting requirement on a case-by-case basis, including (1) requests seeking to transition directly from 1.0 to 3.0 service on the station’s existing facility without simulcasting in 1.0 and (2) requests to air a 1.0 simulcast channel from a host location

¹¹ See 5 U.S.C. 603(a).

¹² See *id.*

that does not cover all or a portion of the station's community of license or from which the station can provide only a lower signal threshold over the community than that required by the rules.¹³ With respect to such requests, we state: "We are inclined to consider favorably requests for waiver of our local simulcasting requirement where the Next Gen TV station can demonstrate that it has no viable local simulcasting partner in its market and where the station agrees to make reasonable efforts to preserve 1.0 service to existing viewers in its community of license and/or otherwise minimize the impact on such viewers (for example, by providing free or low cost ATSC 3.0 converters to viewers)." In this FNPRM, we seek comment on what further guidance we should provide about the circumstances in which we will grant a waiver of the local simulcasting requirement. Among other things, we ask how we should determine if a station has a "viable" simulcast partner and whether there are special circumstances we should consider for NCE and/or Class A stations.

15. *Simulcast Exceptions.*¹⁴ In the Report and Order, we exempt LPTV and TV translator stations from our local simulcasting requirement and allow these stations to transition directly to 3.0 service. In this FNPRM, we also seek comment on whether to exempt NCE and/or Class A stations as a class from our local simulcasting requirement or adopt a presumptive waiver standard for such stations. Class A and NCE stations could also face more difficulty than commercial full power stations face when seeking a local simulcasting partner.

16. *Temporary Use of Vacant Channels.* Second, we seek comment on whether we should let full power broadcasters use channels in the television broadcast band that are vacant to facilitate the transition to 3.0. In the *Next Gen TV NPRM*, the Commission asked whether we should "consider allowing broadcasters [that wish to deploy ATSC 3.0 service] to use vacant in-band channels remaining in the market after the incentive auction repack to serve as temporary host facilities for ATSC 1.0 or 3.0

¹³ The Commission may waive its rules if good cause is shown. See 47 CFR 1.3. We explain in the Report and Order that we are not inclined to consider favorably requests to change community of license solely to enable simulcasting.

¹⁴ Unlike waivers which are considered on a case-by-case basis, exceptions or class waivers do not require the filing of a waiver request.

programming by multiple broadcasters.” ONE Media requests that in markets with vacant channels, the Commission should allow full power broadcasters to use the vacant channels as “dedicated transition channels to ensure maximum continuity of service, just as it did during the transition from analog to digital.” The LPTV Spectrum Rights Coalition opposes ONE Media’s proposal on the ground that it would diminish LPTV licensing rights in the middle of the displacement process. The Wi-Fi Alliance, Microsoft, the Consumers Union et al., and Dynamic Spectrum Alliance also oppose any approach that would expand broadcasters’ spectrum rights in conjunction with ATSC 3.0 deployment, and they express concern about damaging the potential success of white space use in the television bands.

17. *Significantly Viewed Status of Next Gen TV Stations.* Finally, we tentatively conclude that local simulcasting should not change the significantly viewed status of a Next Gen TV station. Stations that vary their signal strength or change their location as a result of moving their 1.0 signal to simulcast raise the question of how this change may affect their status as “significantly viewed” in certain communities or counties under §§76.5(i) and 76.54 of our rules. Significantly viewed status allows the significantly viewed station (1) to be carried by a satellite carrier in such community in the other market; (2) to be carried in such community by cable and satellite operators at the reduced copyright payment applicable to local (in-market) stations; and (3) to be exempt in such community from another station’s assertion of its network non-duplication or syndicated exclusivity rights. Under our proposal, a commercial television station that relocates its 1.0 simulcast channel could not seek to gain significantly viewed status in new communities or counties and such station could not lose significantly viewed status in communities or counties for which it qualified prior to the move of its 1.0 simulcast channel.

2. Legal Basis

18. The proposed action is authorized pursuant to sections 1, 4, 301, 303, 307, 308, 309, 316, 319, 325(b), 336, 338, 399b, 403, 534, and 535 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 301, 303, 307, 308, 309, 316, 319, 325(b), 336, 338, 399b, 403, 534, and 535.

3. Description and Estimate of the Number of Small Entities To Which the

Proposed Rules Will Apply

19. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The types of small entities that may be affected by the R&O fall within the following categories: (1) Wired Telecommunications Carriers, of which 3,083 are estimated to be small entities; (2) Cable Companies and Systems (Rate Regulation), of which 3,900 are estimated to be small entities; (3) Cable System Operators (Telecom Act Standard), of which 52,403,696 are estimated to be small entities; (4) Direct Broadcast Satellite Service, of which 3,083 are estimated to be small entities, but internally developed FCC data suggest that in general DBS service is only provided by large entities; (5) Satellite Master Antenna Television (SMATV) Systems, also known as Private Cable Operators (PCOs), of which 3,083 are estimated to be small entities; (6) Home Satellite Dish (HSD) Service, of which 3,083 are estimated to be small entities; (7) Open Video Services, of which 3,083 are estimated to be small entities; (8) Wireless Cable Systems – Broadband Radio Service and Educational Broadband Service, of which 440(BBS) and 2,241(EBS) are estimated to be small entities; (9) Incumbent Local Exchange Carriers (ILECs) and Small Incumbent Local Exchange Carriers, of which 3,083 are estimated to be small entities; (10) Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing, of which 819 are estimated to be small entities; (11) Audio and Video Equipment Manufacturing of which 465 are estimated to be small entities; (12) and Television Broadcasting, of which 656 (commercial stations), 395 (NCE stations), 2,344 (LPTV), and 3,689 (TV translator stations) are estimated to be small entities.

4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

20. The *FNPRM* does not propose any new reporting, recordkeeping, or compliance requirements. However, if the Commission decides to allow the use of unused channels, there may be new reporting requirements, such as the filing of an application with the Commission. Additionally, if the

Commission decides to adopt specific criteria for its waiver standard, these may be considered new compliance requirements.

5. Steps Taken to Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered

21. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): “(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.”¹⁵

22. *Local Simulcasting Waivers and Exceptions.* The *FNPRM* seeks comment on two issues related to waivers of the local simulcasting requirement: (1) the circumstances in which we should grant a waiver of our local simulcasting requirement for full power and Class A stations; and (2) whether we should permit NCE and Class A stations to transition directly from ATSC 1.0 to 3.0. As noted in Section C. of this IRFA, NCE and Class A stations are considered small entities. Waiver of, or exemption from, the local simulcasting requirement may afford more flexibility to broadcasters, including small entities, that may face unique challenges in finding a suitable simulcasting partner. This added flexibility may reduce costs for such small entities.

23. *Temporary Use of Vacant Channels.* The *FNPRM* seeks comment on whether we should allow full power broadcasters to use vacant channels in the television broadcast band to facilitate the transition to 3.0, and, if so, when they should be able to use these channels, and what procedures we should use to authorize that use. We seek specific comment on the effects on small entities: (1) would

¹⁵ 5 U.S.C. 603(c)(1)-(c)(4).

allowing broadcasters to use these vacant channels help small broadcasters transition to 3.0?,¹⁶ (2) would allowing broadcasters to use these vacant channels impose carriage burdens on small MVPDs?, and (3) what can we do to ease the burdens on those small entities?

24. *Significantly Viewed Status of Next Gen TV Stations.* The *FNPRM* tentatively concludes that the significantly viewed status of a Next Gen TV station should not change if it moves its 1.0 simulcast channel to a temporary host facility. Under this proposal, a commercial television station that relocates its 1.0 simulcast channel could not seek to gain significantly viewed status in new communities or counties and such station could not lose significantly viewed status in communities or counties for which it qualified prior to the move of its 1.0 simulcast channel. We tentatively conclude that maintaining the status quo with respect to eligibility for significantly viewed carriage would avoid some complications and disruptions to MVPDs and their subscribers, who have come to rely on such signals. We seek comment on what effect our proposal and tentative conclusion would have on small broadcasters and MVPDs.

6. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule

25. None.

B. Initial Paperwork Reduction Act of 1995 Analysis

26. This *NPRM* may result in new or revised information collection requirements. If the Commission adopts any new or revised information collection requirements, the Commission will publish a notice in the Federal Register inviting the public to comment on such requirements, as required by the Paperwork Reduction Act of 1995. In addition, pursuant to the Small Business Paperwork Relief Act of

¹⁶ For example, NCTA opposes temporary use of vacant channels in the television broadcast band for ATSC 1.0 simulcast signals. NCTA Reply at 8. NCTA explains that “[a]llowing use of a ‘temporary’ channel for these purposes would impose new, unreimbursed costs on cable operators. Operators might need to purchase and install new equipment – or at a minimum, incur the labor costs and burdens of repointing receive antennas at the headend – to be able to continue to receive a station transmitting on this new frequency.” *Id.*

2002, the Commission will seek specific comment on how it might “further reduce the information collection burden for small business concerns with fewer than 25 employees.”

C. Ex Parte Rules

27. Permit But Disclose. The proceeding this Notice initiates shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s ex parte rules. Ex parte presentations are permissible if disclosed in accordance with Commission rules, except during the Sunshine Agenda period when presentations, ex parte or otherwise, are generally prohibited. Persons making ex parte presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral ex parte presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the ex parte presentation was made, and (2) summarize all data presented and arguments made during the presentation. Memoranda must contain a summary of the substance of the ex parte presentation and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during ex parte meetings are deemed to be written ex parte presentations and must be filed consistent with §1.1206(b) of the rules. In proceedings governed by §1.49(f) of the rules or for which the Commission has made available a method of electronic filing, written ex parte presentations and memoranda summarizing oral ex parte presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that

proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's ex parte rules.

D. Filing Procedures

28. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://apps.fcc.gov/ecfs/>.

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://apps.fcc.gov/ecfs/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.
 - Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
 - All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
 - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
 - U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.

- People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

III. ORDERING CLAUSES

29. **IT IS ORDERED**, pursuant to the authority found in sections 1, 4, 7, 301, 303, 307, 308, 309, 316, 319, 325(b), 336, 338, 399b, 403, 614, and 615 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 157, 301, 303, 307, 308, 309, 316, 319, 325(b), 336, 338, 399b, 403, 534, and 535, this Report and Order and Further Notice of Proposed Rulemaking **IS HEREBY ADOPTED**, effective thirty (30) days after the date of publication in the Federal Register.

IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, **SHALL SEND** a copy of this Report and Order and Further Notice of Proposed Rulemaking, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch,
Secretary.

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